

FILED *dy*

DEC -6 2017

SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

COUNG MACH BINH TIEU

PETITIONER

V.

UNITED STATES OF AMERICA

RESPONDANT

CASE NUMBER:3-11-CR-97-CRB

((REQUEST TO CORRECT A CLERICAL ERROR IN THE CRIMINAL
JUDGMENT ORDER AND PRESENTENCING REPORT AND REMAND FOR
RESENTENCING PUSRSUANT TO FED.R.CRIM.P.RULE 36))

Comes now petitioner under pro se request that a
clerical error in the criminal judgment order and presentence
report be corrected and remand for resentencing wherein
petitioner was twice charged and plead guilty for the same
counts and dates which are counts 5.) and counts 7.) which
both counts fall under 21 u.s.c 846,841(a)(1):conspiracy to
possess with intent to distribute and distribution of MDMA.
The indictment reads as follow in both counts:Between in or
about March 2009 and in or about November of 2009 In the
northern district of California,

Petitioner was sentence in 2012 to a total of 220 months
under counts 3,4,7,21,and 22; also petitioner was sentence
for counts 1,2,5, and 6; to be served concurrently to the
above counts petitioners offense level based upon all the
counts was 37; with a guideline range of 292 months to 365
months.Petitioner received a term of 220 months.Petitioner
feels 12 points in counts 7; are in error for counts 5; were
totaled and calculated before counts 7;

Clearly this court made a clerical error in the record
arising from oversight and omission where counts 5; and

counts 7; were identicle charges and were twice used to calculate petitioners sentence for petitioner received 24 points total do to double counting in the presentencing report and judgment order of counts 5; which petitioner received 12 points and counts 7; petitioner received 12 points. Petitioner request that this court correct the error in the presentencing report and criminal judgment order and remand petitioner for resentencing without the error in the record. (PETITIONER FEELS THAT COUNTS 7 SHOULD BE DISMISSED TO REMEDY THE ERROR WHERE COUNTS 5 WAS PLEAD TO FIRST AND THEREFORE COUNTS 7 IS THE DEFECT/ERROR IN THE RECORD THAT WAS USED TO DOUBLE COUNT PETITIONERS SENTENCE.)

Without counts 7; petitioners offense level would be 25 with A criminal history of 4 and a sentencing range of 84-105 months therefore petitioner shall be sentenced within the sentencing range provided above of 84-105 months.thankyou.

*****RELEIF REQUESTED*****

1.)Petitioner request that this court correct the error in the record arrising from oversight and omission of using counts 7 to twice count petitiones sentence within the criminal judgment order and presentence report where counts 5 already took into account the offense level for conspiracy to possess with the intent to distribute and ditribution of MDMA, 21 u.s.c 846,841(a)(1) for the dates March 2009-November 2009.)

2.)petitioner request that he be allowed to file objection to the new sentencing report if need be and any other objection for related to resentencing.

3.)petitioner request that he be granted any other releif

he is entitled based upon this motion.

4.) Were after giving notice it considers appropriate, the court may at any time correct a clerical error in the judgment, order or other part of the record, or correct an error in the record arising from oversight or omission.

*****PROOF OF SERVICE AND SIGNATURE UNDER A PENALTY OF PERJURY***

Petitioner certifies that the foregoing is true and accurate under a penalty of perjury and that petitioner served a copy of this motion to respondent on DEC-1-2017 and placed this motion and respondent's motion in the outgoing mail box on DEC-1-2017 petitioner who is currently incarcerated at: COUNG MACH BING TIEU INMATE #91019-111 FEDERAL CORRECTIONAL INSTITUTION BOX 800 HERLONG CALIFORNIA 96113.

SIGNATURE AND DATE:

Cuong M. Hien DEC-1-2017